IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

REVIEW PETITION NO. 33 OF 2004
IN
NOTICE OF MOTION NO.2017 OF 2004
IN
APPEAL NO.477 OF 2004
IN
CHAMBER SUMMONS NO.1211 OF 2003
IN
SUIT NO.4411 OF 1997

J.K.Synthetics Ltd. .. Petitioner

v/s.

1. State of Maharashtra & anr. .. Respondents

Mr.J.S.Chinai, senior counsel i/by M/s.M.Ranchoddas & Co. for petitioner.

Ms.A.Kalyanram, A.G.P. for respondent No.1.

Mr.Arun Siwach i/by M/s.Amarchand & Mangaldas for respondent No.2.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 1st September, 2004

P.C.

This review petition is by original defendant No.1 (respondent No.2 in the appeal) seeking review of the order dated 26th July, 2004 passed in notice of motion No.2017 of 2004 by us.

2. The petitioner in support of the review petition has set up the case that the notice of motion alongwith the affidavit in support thereof was offered for service at the office of its advocates M/s.Malvi Ranchoddas & Co. on 16th July, 2004 which was not permissible as per Rule 78 of

the Bombay High Court (Original Side) Rules, 1980 and that the papers offered alongwith the notice of motion were incomplete inasmuch as the compilation containing the memorandum of appeal in which the notice of motion was taken out was not presented alongwith the said notice of motion. Mr. Chinai, the learned senior counsel for the petitioner submitted that the appellant misrepresented the court that the respondent No.2 refused to accept the service of the notice of motion.

3. In opposition to the review petition, the reply affidavit has been filed by the appellant. It is stated therein that the concerned peon attended the office of the advocates for the petitioner at about 2.00 p.m. and not at 6.15 p.m. as has been sought to be made out in the review petition and the advocates for the petitioner refused to accept the notice of motion and the affidavit in support thereof. As regards the incomplete papers, it is stated that the memo of appeal was under office objection and what was sought to be served was notice of motion for condonation of delay in filing the appeal alongwith the affidavit.

4. We considered the matter and in our view, there is no merit in the review petition. As a matter of fact, we find that the petitioner has tried to make out an unacceptable case that the concerned peon

came to the office of the advocates for the petitioner on 16th July, 2004 at about 6.15 p.m. We find from the letter dated 30th July, 2004 written by Ms.Armin Kalyanram, Assistant Government Pleader, High Court, O.S. to the advocates for the petitioner that the concerned peon informed her that he attended the office of the advocates for the petitioner to serve the notice of motion on 16th July, 2004 at 2.20 p.m. and that she could vouch for that since he called up from the office of the advocates for the petitioner sometime in the afternoon that the advocates had refused to accept the service. There is hardly any reason not to accept the statement recorded in the letter dated 30th July, 2004 that the concerned peon attended the office of the advocates for the petitioner on 16th July, 2004 at 2.20 p.m. and that the said peon called the Assistant Government Pleader from the office of the advocates for the petitioner that they refused to accept the service of notice of motion. There is no breach of Rule 78 of the High Court Rules, Original Side since the notice of motion was offered for service on 16th July, 2004 much before 5.30 p.m. As regards the grievance of the petitioner that the papers offered for service were incomplete, the least expected of the advocates for the petitioner was to accept the papers that were offered and an endorsement made that the papers offered were not complete. The

appellant has clearly stated that what was offered for service to the advocates for the applicant was the notice of motion and the affidavit in support thereof and the demand for the copy of memo of appeal was uncalled for as the memo of appeal was under objection.

5. We are satisfied that the applicant (respondent No.2 in the appeal) refused to accept the service of notice of motion and therefore, the order dated 26th July, 2004 condoning the delay in filing the appeal does not require review.

6. Review petition is accordingly, dismissed.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)